

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:	)	Before the Examiner
Christopher A. Brumm	)	Ramya Prakasam
Serial No. 10/541,168	)	
Filed: June 29, 2005	)	Group Art Unit 3651
COMPRESSION PASSING ROLLER	)	April 30, 2008

**ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following are the reasons based upon clear legal or factual deficiencies by which review by the Panel of the present application is respectfully requested. With each of Applicant's arguments, there is a reference to the Final Rejection (paper not numbered) as "FR" and the corresponding paragraph as [FR, para.\_\_\_\_].

**[FR, para. 2]** It is well accepted that a reference does not anticipate a claim unless the reference includes each and every element of the claim. Claims 8, 20, and 23 each include a plurality of rollers each having an outer surface and a plurality of lobes placed circumferentially round the outer surface. Hodlewsky does not include the rollers as claimed in claims 8, 20, and 23. Instead, Hodlewsky discloses only cylindrical rollers, referring to the "outer diameter of the roller" (Hodlewsky, col. 4, lines 26, 35, and 41) which geometrically establishes the roller as being cylindrical. None of the figures of Hodlewsky show anything except rollers 48 having a cylindrical outer surface.

**[FR, para. 2, bullet 3; also para. 7]** The FR refers to the figures of Hodlewsky for disclosing rounded projections, and states that FIG. 4 shows "rounded projections atop the roller," and that this constitutes a plurality of lobes placed around the outer surface of the rollers. This statement is factually incorrect. FIG. 4 shows three rollers atop a flat base portion 20 and an intermediate support 42 extending from top surface 22. There are three rollers 48, each supported by a shaft 46 within an indentation 44 of support 42. Each roller 48 includes a smaller hub 49, hub 49 being provided for side to side abutment of adjacent rollers (col. 4, lines 48-52).

Nowhere does Hodlewsky include the claimed limitation of “each said roller having an outer surface and a plurality of lobes placed circumferentially around the outer surface.” First, FIG. 4 shows three rollers 48, and cannot be said to show “rounded projections atop the roller.” There is no roller having rounded projections in FIG. 4, or anywhere else in Hodlewsky. In addition, and contrary to the third sentence of para. 7, the outer diameter of the rollers cannot be considered a lobe in reference to the hub 49. Applicant is unaware of any definition of lobe under which the cylindrical outer diameter of rollers 48 could be considered a lobe relative to hub 49.

**[FR, para. 2, bullet 4]** The FR refers to Hodlewsky having a static member with a top surface adapted and configured to support a portion of the product. Applicant calls to the attention of the Panel the paragraph beginning at line 67, col. 4, and extending to col. 5, line 8, which refers to an intermediate support 42 that is designed “so that articles being carried by link 12 will not be caught on the intermediate support 42” (emphasis added). Not only does Hodlewsky not disclose the claimed static member, Hodlewsky distinctly teaches away from the claimed static member.

**[FR, para. 8]** The FR states that “simply because the link does not get ‘caught on’ the intermediate support does not necessarily preclude the intermediate support from being adapted and configured to support a portion of the product.” This statement cannot be used in a rejection for novelty, since the statement logically depends upon modifying a part of the cited reference. Further, that modification is not possible because, as noted in Hodlewsky at col. 5, lines 1-8, intermediate support 42 is not intended to support the articles being carried by link 12. The FR also points to the paragraph at the top of column 4 for stating that the static member is adapted to allow rollers to pass through the static member, which is a misreading of Hodlewsky. Hodlewsky shows in FIG. 4 that it is the shafts 46, and not the rollers 48, that pass through the static member. Hodlewsky

discloses that the static member supports the weight of the articles, but only as this weight is transmitted from the shafts to the intermediate support. An intermediate support that supports the weight of the product is not the same as having a “top surface of the static member adapted and configured to support a portion of the product,” as in claim 8. Hodlewsky’s top surface does not support any portion of the product.

**[FR, page 3, bullets 2, 3, 4]** The FR refers to Hodlewsky disclosing heights and widths of specific dimensions. Applicant respectfully requests citation of a specific reference within Hodlewsky to support this statement. The FR refers to FIG. 3 in support. Applicant calls the attention of the Panel that FIG. 3 is not referred to as a scaled drawing, and for that reason it is not possible to ascertain specific dimensions from this drawing.

**[FR, para. 9]** Federal case law does not permit the arbitrary taking of measurements from patent drawings. “It is not necessary for the drawings to be drawn to scale, and unless they are specifically stated to be so, or unless by their nature could not be otherwise, they are not to be taken as so drawn” In re Ringe, 36 USPQ 351, 353 (CCPA 1938). “Arguments based on measurement of a drawing are of little value.” In re Wright, 193 USPQ 332, 335 (CCPA 1977). “It is well established that absent any written description in the specification of quantitative values, testimony or arguments based on measurement of a drawing are of little value.” C. Van Der Lely, N.V. v. F. Lil Maschio, 221 USPQ 34, 38 (S.D. Ohio 1983).

**[FR, page 3, bullet 7 and page 4, bullet 6]** The FR refers to FIG. 3 for support of the statement that Hodlewsky discloses means for interlocking adjacent driven rollers such that lobes of adjacent rollers have a predetermined angular relationship. Further, the FR states that Hodlewsky discloses in FIGS. 1 and 3 a means for coupling together rollers such that the rollers rotate in unison. In contrast, Hodlewsky states that “rollers 48 do not fit tightly against each other,” and also states that it is “especially important” to have low friction

between adjacent rollers (Hodlewsky, col. 4, lines 44-66). In contrast to the statement of the FR, Hodlewsky specifically teaches away from the coupling of adjacent rollers.

**[FR, para. 10]** The FR states that Hodlewsky couples the rollers together by chains 52 and locks adjacent rollers such that they rotate in unison. This is a misreading of Hodlewsky. The FR cites a portion of Hodlewsky that does not establish any interlocking of adjacent rollers. In clear contrast, Hodlewsky shows and describes what is well-known in the industry as slippable rollers: "the inner diameter rollers 48 is slightly larger than the outer diameter of the shafts 46 so that the rollers 48 may rotate on the shafts 46," (col. 4, lines 15-18). Later in that same paragraph Hodlewsky states that it is friction between the article being conveyed and the outer diameter of the roller that causes the roller to turn. There is no structure anywhere in Hodlewsky that interlocks adjacent rollers such that they rotate in unison.

Further, the FR states that simply because the rollers do not fit tightly against each other does not mean that there is not interlocking of adjacent rollers. This logic is legally flawed. It is well known that establishing a case of anticipation or obviousness includes finding each and every element of the claim in a reference. This is not the same as using a double negative ("simply because the reference does not do X does not mean that it can't do X") Applicant respectfully requests citation of a statute, regulation, or case law that provides a legal basis for applying the logic of para. 10 and other paragraphs to interpretation of a claim.

**[FR, page 4, bullet 1]** The FR states that Hodlewsky discloses adjacent rollers being in a fixed relationship to one another with a predetermined angular offset from the lobe of one roller to the lobes of a adjacent roller, and further that the offsets are within certain specified angular ranges (citing FIG. 3). As stated earlier, Hodlewsky does not show

lobes of any type, does not disclose a predetermined angular relationship, and does not include scaled drawings that permit the measurement of any angular relationship.

**[FR, page 5, para. 4]** In order for one or more references to establish a case of obviousness, those references must include all elements of the cited claims. Applicant respectfully disagrees that the combination of Meishner and Hodlewsky constitute a *prima facie* case of obviousness. Hodlewsky does not include all elements of claim 8, the elements of which are included in claims 18 and 19. Therefore, the combination of Meishner and Hodlewsky cannot constitute a *prima facie* case of obviousness of claims 18 and 19.

**[FR, page 6, para. 5]** In order for one or more references to establish a case of obviousness, those references must include all elements of the cited claims. Applicant respectfully disagrees that the combination of Clopton and Hodlewsky constitute a *prima facie* case of obviousness. Hodlewsky does not include all elements of claim 20, the elements of which are included in claim 22. Therefore, the combination of Clopton and Hodlewsky cannot constitute a *prima facie* case of obviousness of claim 22.

In order to comply with the five page limitation for this request, Applicant has not addressed all factual and legal errors in the Final Rejection. There is no admission that the cited combinations are legally permitted, or any other admissions as to any prior art. However, Applicant has refuted a sufficient number of factual and legal errors such that all claims are allowable, and Applicant respectfully requests allowance of claims 8-27.

Respectfully submitted,

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